

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.43225 of 2015**

Arising Out of PS.Case No. -215 Year- 2009 Thana -MADHEPURA District- MADHEPURA

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1. Mithi Kumari, D/o Late Kesho Prasad, Resident of Village Barah, P.S. Haranaut, Dist. Nalanda at present Resident of Mohalla Gulzarbad Ward No. 20 P.S. Madhepura Dist. Madhepura

.... .... Petitioner/s

Versus

1. THE STATE OF BIHAR  
2. Chandan Singh @ Chandan Kumar, Son of Binay Singh @ Binay Kumar Singh, Resident of Village Birju Milki, P.S. Haranaut Dist. Nalanda

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar, Advocate  
For the O.P. No. 2 : Mr. Sanjay Kumar, Advocate  
For the Opposite Party/s : Mr. J.N.Thakur, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI**  
**SHARAN SINGH**  
**ORAL ORDER**

7      05-12-2016                      There is a growing tendency of filing applications for cancellation of bail of husband, accused in a case under Section 498A of the Indian Penal Code, once some dispute reemerges between the husband and wife after grant of such bail.

The petitioner is wife of opposite party No. 2. Opposite party No. 2 has been made accused in Madhepura P.S. Case No. 215 of 2009 registered for the offence punishable under Sections 498A, 406 and 507 of the Indian Penal Code and 3/4 of Dowry Prohibition Act. It appears from the record that based on a complaint case, being the Complaint Case No. 35 of 2010, in the court of learned Chief Judicial Magistrate, Madhepura, the said



First Information Report came to be registered.

The opposite party No. 2 had filed an application seeking anticipatory bail before this Court registered as Criminal Miscellaneous No. 34613 of 2010. By an order dated 19.01.2015, this Court granted the opposite party No. 2 privilege of anticipatory bail.

Seeking cancellation of bail so granted, the case of the petitioner is that after filing of the First Information Report, the petitioner and opposite party No. 2 had resolved their disputes and were living together peacefully as husband and wife. In the meanwhile, concealing the fact that the opposite party No. 2 had filed an application for grant of anticipatory bail, the opposite party No. 2 obtained anticipatory bail by the said order dated 19.01.2015.

Learned counsel for the petitioner has submitted that though it has been recorded in the said order dated 19.01.2015 that the petitioner did not appear despite notice but the fact remains that the petitioner was not aware of such notice having been issued to her. Learned counsel for the petitioner has also emphatically argued that after grant of anticipatory bail, behaviour of the opposite party No. 2 towards the petitioner suddenly changed and consequently they are again living separately.



This is to be kept in mind that the considerations for grant of bail or anticipatory bail are entirely different from the considerations for cancellation of bail. It has been clearly held by Supreme Court and this Court also that only in such circumstance, when there is instance of misuse of privilege of bail either by making attempts to tamper with the evidence or interfering with the course of investigation or threatening the witnesses, the Court should consider exercising power under Section 439(2) for cancellation of bail already granted.

What has emerged from the facts, which are thereon records and statement and submission made on behalf of the petitioner that it is primarily a matrimonial dispute between the petitioner and the opposite party No. 2. In my opinion, no ground for cancellation of bail is made out.

This application is accordingly rejected.

**(Chakradhari Sharan Singh, J)**

Vats/-

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